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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 TREY STYLES,

CASE NO. 21-5365

12 Plaintiff,

ORDER ADOPTING REPORT AND
RECOMMENDATION

v.

13 DONALD HOLBROOK, et al.,

14 Defendants.

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16 THIS MATTER comes before the Court on the Report and Recommendation of U.S.
17 Magistrate Judge J. Richard Creatura. Dkt. 13. The Court has considered the Report and
18 Recommendation, the Plaintiff's "Exception of Court Findings" (Dkt. 14), and the remaining
19 file.

20 As explained in the Report and Recommendation, the *pro se* Plaintiff originally filed a
21 complaint pursuant to 42 U.S.C. § 1983, asserting various claims which challenge the validity of
22 his conviction. After being informed by the court that he failed to state a viable claim under
23 28 U.S.C. § 1983, he was given an opportunity to either file: (1) an amended civil complaint
24 pursuant to 42 U.S.C. § 1983 or (2) a petition for relief under 28 U.S.C. § 2254. The Plaintiff

1 filed both a proposed amended complaint under 42 U.S.C. § 1983 (Dkt. 10) and a petition for
2 relief under 28 U.S.C. § 2254 (Dkt. 11).

3 The Report and Recommendation recommends dismissal of this case without prejudice,
4 denial of all pending motions as moot, and that the Clerk of the Court be directed to open a new
5 case pursuant to 28 U.S.C. § 2254 and docket the 28 U.S.C. § 2254 Petition (Dkt. 11) in that
6 case. Dkt. 13. The Plaintiff filed an “Exception of Court Findings,” in which he states that he
7 “agrees with the Court finding and is ready to proceed on September 10, 2021.” Dkt. 14.

8 The Report and Recommendation (Dkt. 13) should be adopted. The proposed amended
9 complaint (Dkt. 10) should be dismissed without prejudice as a mixed petition. This case should
10 be dismissed without prejudice. All pending motions should be denied as moot. The Clerk of
11 the Court is directed to open a new case pursuant to 28 U.S.C. § 2254 and docket the Plaintiff’s
12 28 U.S.C. § 2254 Petition (Dkt. 11) in that case. The Clerk of the Court is further directed to
13 send the Plaintiff the IFP application that applies to habeas corpus petitions.

14 **IT IS SO ORDERED.**

15 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
16 to any party appearing *pro se* at said party’s last known address.

17 Dated this 13th day of September, 2021.

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20 ROBERT J. BRYAN
United States District Judge
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